

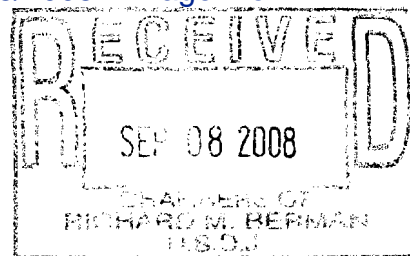
MEMO ENDORSED

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THE CITY OF NEW YORK
LAW DEPARTMENT
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NEW YORK, NY 10007

MICHAEL A. CARDOZO
Corporation Counsel

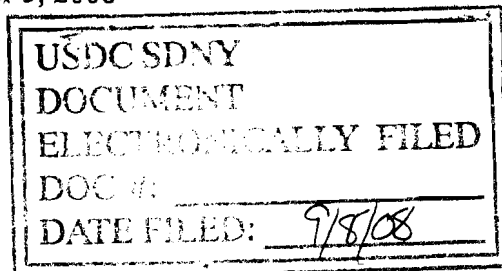


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September 5, 2008

BY HAND

Honorable Richard M. Berman
United States District Judge, SDNY
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, New York 10007



Re: Mark Kapiti v. Raymond W. Kelly, et al., 07 Civ. 3782 (RMB) (KNF)

Your Honor:

We are counsel for all parties to this action. In that regard, we write jointly to respectfully request (1) a short enlargement of time until September 10, 2008 for the parties to file their motions *in limine* with the Court; and (2) request permission to submit the joint proposed jury charge, verdict sheet and witness lists after the Court rules on the parties' motions *in limine*.

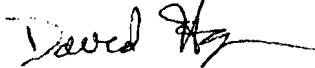
As background, over the past several days the parties have been working diligently with each other to draft the joint pre-trial submissions. In addition to issues that the parties intended to raise with the Court in their motions in limine, during the course of the parties' discussions, additional legal and evidentiary issues have arisen which also need to be addressed in the parties' motions *in limine*. As a result of these legal and evidentiary disputes, the parties respectfully request a very short extension of time until September 10, 2008 to file their motions *in limine*.

Second, all parties also agree that without the Court's rulings on several important legal issues related to the parameters of due process, the parties are not able to create joint documents that will be useful at trial. While the parties are working hard and closely with one another to draft proposed pre-trial documents, the drafts of these documents will bear little resemblance to the documents used at trial because the Court's legal rulings will directly and necessarily affect the contents of the jury charge, verdict sheet and the witnesses the parties intend to call at trial. As but one example, the parties disagree on whether the law as set forth by the Second Circuit in *Krimstock v. Kelly* applies to the facts of this case. As the Court can imagine, Your Honor's decision as to whether this action is governed by *Krimstock* will have a substantial affect upon the makeup of the witness list and the jury instructions and verdict sheet. Therefore, because of

the number of hours the parties have already invested in drafting the various documents, the parties believe that, at this point, further joint efforts would be pointless without the Court's guidance by way of decisions on the motions. Accordingly, the parties jointly request permission to submit the joint proposed jury charge, verdict sheet and witness lists after the Court rules on the parties' motions *in limine*.

We thank the Court for its time and consideration in this regard.

Respectfully submitted,



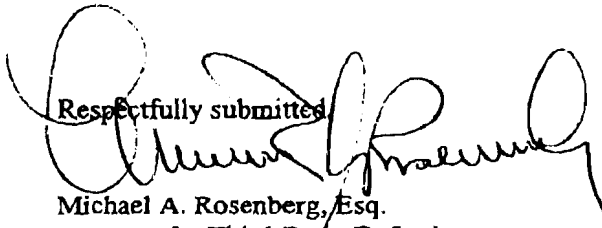
David M. Hazan, Esq.
Assistant Corporation Counsel

Respectfully submitted,



Steven L. Kessler, Esq.
Attorney for Plaintiff

Respectfully submitted,



Michael A. Rosenberg, Esq.
Attorney for Third-Party Defendant

cc:

VIA FACSIMILE

Honorable Kevin Nathaniel Fox
United States Magistrate Judge, SDNY
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, New York 10007

One motion (per side) with
however many aspects to it
included + subject to page limits.
Parties may have to Sept 10, 2008.
Joint documents must be filed
as scheduled + NOT after resolution
of motions or Rule 11 may apply.

SO ORDERED:

Date: 9/8/08

Richard M. Berman

Richard M. Berman, U.S.D.J.